



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2004

Mr. Brendan W. Guy
Assistant County Attorney
Henderson County
100 East Tyler Street, Room 100
Athens, Texas 75751

OR2004-8704

Dear Mr. Guy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211001.

The Henderson County Sheriff's Office (the "sheriff") received a request for information pertaining to three named individuals. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). In this case, the requestor asks for law enforcement records regarding three named individuals. We find that the present request implicates these individuals' rights to privacy. Thus, to the extent the sheriff maintains law enforcement records depicting any of

the individuals at issue as suspects, arrestees, or criminal defendants, the sheriff must withhold such information pursuant to section 552.101 in conjunction with common-law privacy pursuant to the decision in *Reporters Committee*.

Section 552.101 also encompasses information made confidential made confidential by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we determine that the offense report submitted as Exhibit 12 consists of a report of alleged or suspected child abuse or neglect. Thus, we find that this information is within the scope of section 261.201 of the Family Code. You have not indicated that the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, Exhibit 12 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the sheriff must withhold Exhibit 12 from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law.

Next, you indicate that the offense report submitted as Exhibit 5 is excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Exhibit 5 involves a runaway, conduct which is within the scope of section 58.007. *See* Fam. Code § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return”). Accordingly, the sheriff must withhold Exhibit 5 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You have marked information in the offense reports submitted as Exhibits 7 through 15 that you contend is excepted from disclosure under section 552.101 in conjunction with the informer’s privilege. The common-law informer’s privilege, incorporated into the Public Information Act (the “Act”) by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer’s privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). You indicate that the information you have marked in Exhibits 7 through 15 identifies individuals who reported violations of law to the sheriff, and you indicate that the violations reported are subject to the sheriff’s law enforcement authority. Based on your representations and our review, we agree that portions of the information in Exhibits 7 through 15 are protected by the informer’s privilege. Accordingly, we have marked the information that the sheriff must withhold pursuant to section 552.101 in conjunction with the informer’s privilege.

Next, Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(1) must demonstrate that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You indicate that the offense reports submitted as Exhibits 3 and 4 relate to pending criminal investigations. Based on your representations and our review, we find that release of Exhibits 3 and 4 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle*, 531 S.W.2d 177. We therefore agree that section 552.108(a)(1) is applicable to this information. You also indicate that the offense report submitted as Exhibit 6 pertains to an investigation that concluded in a final result other than conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) is applicable to Exhibit 6.

We note, however, that basic information normally found on the front page of an offense report is generally considered public. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, the sheriff must release basic information from Exhibits 3, 4, and 6 to the requestor. The remaining information in Exhibits 3, 4, and 6 may be withheld under section 552.108 of the Government Code. We note that the sheriff has the discretion to release all or part of the remaining information in Exhibits 3, 4, and 6 that is not otherwise confidential by law. Gov't Code § 552.007.

Finally, we note that the offense reports submitted as Exhibits 13 and 15 contain Texas motor vehicle license plate numbers that are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. The sheriff must withhold the Texas license plate numbers we have marked under section 552.130 of the Government Code.

In summary, to the extent the sheriff maintains law enforcement records that depict any of the individuals named in the request as criminal suspects, arrestees, or defendants, the sheriff must withhold such information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We have marked information the sheriff must withhold pursuant to section 552.101 in conjunction with sections 261.201 and 58.007 of the Family Code. We have marked information identifying informers that the sheriff must withhold pursuant to section 552.101 in conjunction with the informer's privilege. With the exception of basic information, which must be released, the sheriff may withhold Exhibits 3 and 4 under section 552.108(a)(1) of the Government Code and Exhibit 6 under section 552.108(a)(2) of the Government Code. We have marked Texas license plate numbers that must be withheld under section 552.130 of the Government Code. The remainder of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 211001

Enc: Submitted documents

c: Ms. Jackie T. Grier
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(w/o enclosures)